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C O N F I D E N T I A L SECTION 01 OF 04 MANILA 004712

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TAGS: [PREL](#) [MARR](#) [KCRM](#) [CASC](#) [RP](#)  
SUBJECT: BACKGROUND ON THE MARINE CASE IN ADVANCE OF  
EXPECTED VERDICT

REF: MANILA 4500 AND PREVIOUS

Classified By: Ambassador Kristie A. Kenney for reasons 1.4  
(b) and (d).

11. SUMMARY (C) A verdict is expected on November 27 in the legal case in a Philippine court against four U.S. Marines charged with raping a Filipino woman on the evening of November 1, 2005 in Subic. This message re-caps events that occurred as well as efforts by the USG to assure a positive atmosphere for the Marine case to be tried.

12. (SBU) Under the terms of the Visiting Forces Agreement, the Marines have remained in USG custody during the investigation and trial by Philippine authorities. Once begun, the trial has moved briskly in order to comply with a one-year period since assignments on December 27, provided for in the Visiting Forces Agreement. Media coverage of the case has been often highly emotional, but evenhanded by Filipino standards. Embassy has countered efforts of groups seeking to use this trial to harm Philippine-U.S. relations by acknowledging the high emotions involved in the case, underscoring that we want truth and justice to prevail through rule of law, and stressing the merits of the VFA. Our ongoing ship visits and military exercises, with their robust components of community relations projects, have contributed to even more favorable views of the U.S./Philippine mil-mil relationship than one year ago. END SUMMARY.

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The Alleged Rape  
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13. (U) On the evening of November 1, 2005 LCpls Daniel Smith, Keith Silkwood, and Dominic Duplantis went to the Neptune Club in Subic Bay at approximately 9:30 p.m. to meet up with other Marines. LCpl Smith met the complainant, who had arrived in Subic two days previously, and they conversed and danced. The Marines' superior officer, SSgt Chad Carpentier, appeared at the Neptune Club at approximately 11:30 p.m. to remind the Marines of their midnight curfew and to drive them back to the USS Essex, about five minutes away by van.

14. (U) According to the testimony of LCpl Smith, he invited the complainant to ride with them after she asked him to stay at the club a little longer. She accepted, exited the bar with the Marines, climbed into the van, and headed to the rear seat. Smith testified that the two of them engaged in consensual sexual intercourse, with Smith wearing a condom.

15. (U) LCpl Smith further testified that when the van arrived at the pier, someone shouted, "Hurry, you and the bitch get out!" They all exited the van except SSgt

Carpentier, who directed the van driver to take him to another bar. Smith testified that he tried but failed to find a taxi for the complainant, who was upset about the name-calling and struggling to get dressed. The midnight curfew was approaching and time was tight. Smith testified that it was a well lit area with lots of people around so he felt comfortable leaving her after she said she would be fine getting home. Smith testified that he told her they could meet at the Neptune Club again the next night. Smith testified that he then hurried back to the Essex with Silkwood and Duplantis, arriving shortly after 12 a.m.

¶6. (U) In contrast, the complainant testified that LCpl Smith brought her out of the bar and into the back seat of the van. She testified that she had been drinking heavily and was in and out of consciousness. At one point, she says she woke up in the back seat with Smith on top of her. She testified that when the van arrived at the pier she was lifted out of the van with her pants on backwards and around her ankles.

¶7. (U) A Naval Criminal Investigation Service (NCIS) agent, who was present in Subic for the visit of the USS Essex and other U.S. Navy vessels participating in a military exercise, learned about allegations of rape on November 2. In the early morning hours of November 3, SSgt Carpentier, LCpls Smith, Silkwood, and Duplantis were awakened on the USS Essex, and escorted to the Subic Bay Metropolitan Authority (SBMA), where NCIS and SBMA authorities questioned them. When it became clear that the Philippine authorities intended to press charges, a representative of the Joint United States Military Assistance Group (JUSMAG) asserted the U.S. Government's right to custody of the accused, and arranged for transportation of the Marines to a safe house in Manila

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on the morning of November 3. The Embassy later transferred them to safe quarters on the Embassy grounds. On December 27, Philippine prosecutors filed charges of rape against SSgt Carpentier, and LCpls Smith, Silkwood, and Duplantis.

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The Trial Schedule  
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¶8. (U) On June 2, the trial of the four Marines began in Makati City, Manila, after a change of venue from Olongapo City at the request of the local judge. Much of the case for the prosecution was built around the testimony of the NCIS agents and NCIS Locally Employed Staff, who had conducted interviews of the Marines involved, and many other witnesses, and who had shared the NCIS reports with the local prosecutor. Much testimony by the prosecution focused on the witnesses' recollection of events documented in NCIS' written reports. The prosecution conceded on June 22 that physical evidence, including the complainant's clothing and a condom found at the scene, was mishandled by the SBMA's Intelligence and Investigation Office.

¶9. (U) The complainant testified beginning on July 6. Prosecutors argued that the complainant drank heavily before the alleged incident, and that she intermittently experienced memory black-outs before, during, and after the incident allegedly took place. In further testimony, she recounted the destitution she and her family have endured since the incident.

¶10. (U) The prosecution's chief medical witness testified that the complainant's injuries were consistent with sexual assault and offered possible causes for why no trace of semen was found anywhere. The defense established that the medical witness never personally examined the complainant or the evidence, but based her testimony on an interview of the complainant before the trial began. A toxicologist testifying for the prosecution alleged that the complainant was intoxicated to such a degree that she would not have been

able to consent to sexual activity.

¶11. (U) The defense attorneys commenced their case on September 11, with testimony from LCpl Smith and another Marine and friend of the complainant, LCpl Justin Bamberger. SSgt Carpentier followed and testified that his first impression of the complainant was that she was a "professional preying on the vulnerability of Smith," and that she seemed in full control of herself. LCpl Silkwood's and LCpl Duplantis' testimonies corroborated LCpl Smith's and SSgt Carpentier's stories. Defense forensic obstetrical and gynecologist experts testified that the injuries sustained by the complainant did not suggest rape. The defense rested after calling six witnesses.

¶12. (U) The testimony of the Marines coincided with a breakdown in the relations between the members of the prosecution team (a mix of government and private lawyers) and the complainant. According to the complainant and her private attorney, the prosecution team tried to bully her and her family into accepting a settlement on the case. Senior State Prosecutor Emelie delos Santos denied such a conversation took place and labeled the complainant and her family "liars" and "ingrates." Justice Minister Raul Gonzalez publicly mused that the complainant might have dreamed up the settlement offer as well as the whole rape incident.

¶13. (U) On October 5, Judge Pozon gave the prosecution and defense 30 days to file Memoranda of Evidence, and announced that he planned to render his verdict on November 27.

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Post Verdict Plans  
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¶14. (C) With a verdict still expected on November 27, the Embassy's Working Group, with input from representatives of the III Marine Expeditionary Force (MEF) in Okinawa, has tentative post-verdict plans that take into account security, public affairs, transportation, financial, and immigration concerns. Immediately following the judge's verdict, any Marines acquitted will be transported via a U.S. military aircraft directly to Okinawa. Any Marines found guilty will remain in Embassy custody, pending decisions on incarceration or appeals issues. In the event that the verdict involves any civil (monetary) damages against them, the four Marines have arranged to pre-pay each of their attorneys \$2,000, which would be used by the attorneys themselves to pay

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directly to the court, if needed.

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Support for the Marines  
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¶15. (U) The Embassy continues to provide security, American Citizen Services (ACS), public affairs, and other support to the defendants. Representatives of the III MEF, including a member of the Judge Advocate's Office, have been present to supervise the accused at all times as well as to coordinate with the local defense attorneys and to observe the trial. ACS representatives have also attended all trial sessions. RSO has provided security for the appearances by the accused at the court, and has been consistently pleased with the extent and quality of security support provided by the mayor's office and police department in and around the Makati Court House. They expect the same level of cooperation on the day of the verdict. Our Public Affairs Section has directed public attention toward the judicial process, and away from broader issues of U.S.-Philippine relations. Embassy continues to provide access to some fitness and sports facilities on the Chancery grounds for the four Marines.

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Test case for VFA  
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¶16. (C) This case was the first time the VFA, signed in 1998 and ratified by the Philippine Senate in 1999, had been put to use in a criminal case. A key measure in the VFA allows the USG to maintain custody of the four Marines. The GRP respected the terms of the VFA. However, we expect that the custody issue will again be raised by GRP officials, perhaps for domestic political reasons, if any of the Marines are found guilty. Embassy is firm in its interpretation of the VFA that allows us to continue to maintain custody through any appeals process. With the consent of the accused and their local attorneys, the Embassy facilitated one request each from the Visiting Forces Agreement Commission and from the Congressional VFA Oversight Committee to meet with the accused before their public appearances in court.

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Extensive Media Coverage  
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¶17. (U) Media coverage of this case has been, by drama-laden Filipino standards, more or less evenhanded. Sensational media coverage spiked at the time of the initial accusations, at the outset of the trial and as the principal players - the complainant and the Marines - testified. The local media has also made much of the public disputes between the complainant and the prosecution team. Two of the Marines, SSgt Carpentier and LCpl Smith, have given several television and/or print interviews with the advice and consent of their legal counsel and within guidelines established by III MEF and the Embassy. LCpls Silkwood and Duplantis have not given interviews. While detained U.S. enlisted personnel would not normally give press interviews, Embassy facilitated those requested by SSgt Carpentier and LCpl Smith because of the view of those two Marines and their attorneys that this would contribute positively to their case.

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Overcoming Negative Publicity  
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¶18. (U) Political activists surrounding the complainant and her principal private legal counsel have sought to raise anti-American public sentiment about this case, apparently with the objective of putting public opinion pressure on the court, and on the Philippine government and Congress to abrogate the VFA and damage Philippine-U.S. relations.

¶19. (SBU) Our continuing and extensive program of ship visits and military exercises, all of which include a healthy component of community relations and/or civil/humanitarian programs, have provided a welcome antidote to the publicity over this case and have reinforced the point that our mil-mil relationship, as part of the broader U.S.-Philippine friendship, is mutually beneficial. A recent survey indicated that public attitudes toward U.S. ship visits and exercises have actually grown more favorable over the past year. The one year anniversary of the outset of this case coincided with the return of the USS Essex to Subic for the Talon Vision/Phiblex exercise, without engendering negative publicity or more than a token protest by a small group of

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feminists.

¶20. (U) The Embassy has also consistently sought to lessen the potential pressure of nationalist public opinion on the court and the Philippine government by publicly emphasizing several points throughout this process:

- that the case is highly emotional and difficult for all the individuals involved, as well as for their families and friends;

- that the USG has no prejudgment about the guilt or innocence of any of those involved, and wants the truth to be known and justice served;
- that under both Filipino and U.S. law, all accused are considered innocent until proven guilty; and,
- that the trial itself is consistent with the terms of the VFA.

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